

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0353.01 Jerry Barry

SENATE BILL 18-123

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Liston,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING ASBESTOS TRUST CLAIM TRANSPARENCY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill enacts the "Asbestos Bankruptcy Trust Claims Transparency Act". Federal bankruptcy law provides companies with asbestos liabilities the ability to channel their future liabilities into trusts. Plaintiffs harmed from asbestos exposure may file claims with the trusts and file lawsuits against companies that are still solvent. The bill addresses the disconnect between these separate compensation systems. The bill sets forth requirements for the filing of asbestos trust claims and provides for their admissibility so that juries are informed about all of a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

plaintiff's exposure to asbestos and can properly determine fault.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 14 to article
3 21 of title 13 as follows:

4 PART 14

5 ASBESTOS BANKRUPTCY TRUST CLAIMS

6 TRANSPARENCY ACT

7 **13-21-1401. Short title.** THE SHORT TITLE OF THIS PART 14 IS THE
8 "ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT".

9 **13-21-1402. Findings and purpose.** (1) THE GENERAL ASSEMBLY
10 FINDS THAT:

11 (a) OVER ONE HUNDRED EMPLOYERS HAVE DECLARED
12 BANKRUPTCY AT LEAST PARTIALLY DUE TO ASBESTOS-RELATED LIABILITY;

13 (b) SCORES OF TRUSTS HAVE BEEN ESTABLISHED IN BANKRUPTCY
14 PROCEEDINGS TO FORM A MULTI-BILLION DOLLAR COMPENSATION SYSTEM
15 FOR ASBESTOS CLAIMANTS OUTSIDE OF THE CIVIL COURTS, AND NEW
16 ASBESTOS TRUSTS CONTINUE TO BE FORMED;

17 (c) ASBESTOS CLAIMANTS TYPICALLY SEEK COMPENSATION FROM
18 SOLVENT DEFENDANTS IN CIVIL ACTIONS AND FROM TRUSTS OR CLAIMS
19 FACILITIES FORMED IN ASBESTOS BANKRUPTCY PROCEEDINGS;

20 (d) THERE IS LIMITED TRANSPARENCY BETWEEN THESE TWO PATHS
21 TO RECOVERY;

22 (e) AN ABSENCE OF TRANSPARENCY WITH RESPECT TO ASBESTOS
23 BANKRUPTCY TRUST CLAIMS HAS RESULTED IN THE SUPPRESSION OF
24 EVIDENCE IN ASBESTOS ACTIONS;

25 (f) A FEDERAL BANKRUPTCY COURT FOUND THAT TRUST CLAIM

1 FILINGS ARE BEING MANIPULATED AND INFORMATION WITHHELD IN ORDER
2 TO INFLATE RECOVERIES IN ASBESTOS ACTIONS;

3 (g) THE LACK OF TRANSPARENCY REGARDING TRUST CLAIMS
4 INFORMATION HARMS COLORADO EMPLOYERS, THEIR EMPLOYEES,
5 SHAREHOLDERS, AND COMMUNITIES IN WHICH THEY OPERATE. COMPANIES
6 THAT PAY MORE THAN THEIR FAIR SHARE IN ASBESTOS CASES HAVE FEWER
7 RESOURCES TO PAY FUTURE CLAIMANTS AND INVEST IN COLORADO'S
8 ECONOMY; AND

9 (h) TRANSPARENCY WITH RESPECT TO ASBESTOS TRUST CLAIMS
10 AND CLAIMS MADE IN CIVIL ASBESTOS ACTIONS PROMOTES THE INTEGRITY
11 OF THE CIVIL ASBESTOS COURT PROCEEDING AND FURTHERS RECOVERY
12 LONGEVITY TO HELP FUTURE PLAINTIFFS.

13 (2) IT IS THE PURPOSE OF THIS PART 14 TO:

14 (a) PROVIDE TRANSPARENCY WITH RESPECT TO ASBESTOS TRUST
15 CLAIMS AND CLAIMS MADE IN CIVIL ASBESTOS ACTIONS; AND

16 (b) REDUCE THE OPPORTUNITY FOR WITHHOLDING OR SUPPRESSION
17 OF TRUST-RELATED EXPOSURE EVIDENCE IN ASBESTOS ACTIONS.

18 **13-21-1403. Definitions.** AS USED IN THIS PART 14, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "ASBESTOS" MEANS CHRYSOTILE, AMOSITE, CROCIDOLITE,
21 TREMOLITE ASBESTOS, ANTHOPHYLLITE ASBESTOS, ACTINOLITE ASBESTOS,
22 ASBESTIFORM WINCHITE, ASBESTIFORM RICHTERITE, ASBESTIFORM
23 AMPHIBOLE MINERALS, AND ANY OF THESE MINERALS THAT HAVE BEEN
24 CHEMICALLY TREATED OR ALTERED.

25 (2) "ASBESTOS ACTION" MEANS A CLAIM FOR DAMAGES OR OTHER
26 RELIEF PRESENTED IN A CIVIL ACTION ARISING OUT OF, BASED ON, OR
27 RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS AND ANY

1 DERIVATIVE CLAIM MADE BY OR ON BEHALF OF A PERSON EXPOSED TO
2 ASBESTOS OR A REPRESENTATIVE, SPOUSE, PARENT, CHILD, OR OTHER
3 RELATIVE OF THAT PERSON.

4 (3) "ASBESTOS TRUST" MEANS A GOVERNMENT-APPROVED OR
5 COURT-APPROVED TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION
6 FUND, OR CLAIMS FACILITY CREATED AS A RESULT OF AN ADMINISTRATIVE
7 OR LEGAL ACTION, A COURT-APPROVED BANKRUPTCY, OR PURSUANT TO 11
8 U.S.C. SEC. 524 (g) OR 11 U.S.C. SEC. 1121 (a) OR OTHER APPLICABLE
9 PROVISION OF LAW, THAT IS INTENDED TO PROVIDE COMPENSATION TO
10 CLAIMANTS ARISING OUT OF, BASED ON, OR RELATED TO THE HEALTH
11 EFFECTS OF EXPOSURE TO ASBESTOS.

12 (4) "PLAINTIFF" MEANS A PERSON BRINGING AN ASBESTOS ACTION,
13 INCLUDING A PERSONAL REPRESENTATIVE IF THE ASBESTOS ACTION IS
14 BROUGHT BY AN ESTATE, OR A CONSERVATOR OR NEXT FRIEND IF THE
15 ACTION IS BROUGHT ON BEHALF OF A MINOR OR LEGALLY INCAPACITATED
16 PERSON.

17 (5) "TRUST CLAIMS MATERIALS" MEANS A FINAL EXECUTED PROOF
18 OF CLAIM AND ALL OTHER DOCUMENTS AND INFORMATION RELATED TO A
19 CLAIM AGAINST AN ASBESTOS TRUST, INCLUDING CLAIMS FORMS AND
20 SUPPLEMENTARY MATERIALS, AFFIDAVITS, DEPOSITIONS AND TRIAL
21 TESTIMONY, WORK HISTORY, MEDICAL AND HEALTH RECORDS,
22 DOCUMENTS REFLECTING THE STATUS OF A CLAIM AGAINST AN ASBESTOS
23 TRUST, AND, IF THE ASBESTOS TRUST CLAIM HAS SETTLED, ALL
24 DOCUMENTS RELATING TO THE SETTLEMENT OF THE ASBESTOS TRUST
25 CLAIM.

26 (6) "TRUST GOVERNANCE DOCUMENTS" MEANS ALL DOCUMENTS
27 THAT RELATE TO ELIGIBILITY AND PAYMENT LEVELS FOR AN ASBESTOS

1 TRUST, INCLUDING CLAIMS PAYMENT MATRICES, TRUST DISTRIBUTION
2 PROCEDURES, OR PLANS FOR REORGANIZATION, FOR AN ASBESTOS TRUST.

3 **13-21-1404. Required disclosures by plaintiff.** (1) EACH
4 PLAINTIFF IN AN ASBESTOS ACTION SHALL PROVIDE ALL PARTIES WITH A
5 SWORN STATEMENT IDENTIFYING ALL ASBESTOS TRUST CLAIMS THAT HAVE
6 BEEN FILED BY THE PLAINTIFF OR BY ANYONE ON THE PLAINTIFF'S BEHALF,
7 INCLUDING CLAIMS WITH RESPECT TO CONDITIONS OTHER THAN THOSE
8 THAT ARE THE BASIS FOR THE ASBESTOS ACTION OR THAT POTENTIALLY
9 COULD BE FILED BY THE PLAINTIFF AGAINST AN ASBESTOS TRUST. THE
10 SWORN STATEMENT SHALL BE PROVIDED NO LATER THAN ONE HUNDRED
11 TWENTY DAYS PRIOR TO THE DATE SET FOR TRIAL FOR THE ASBESTOS
12 ACTION. FOR EACH ASBESTOS TRUST CLAIM OR POTENTIAL ASBESTOS
13 TRUST CLAIM IDENTIFIED IN THE SWORN STATEMENT, THE STATEMENT
14 SHALL INCLUDE THE NAME, ADDRESS, AND CONTACT INFORMATION FOR
15 THE ASBESTOS TRUST; THE AMOUNT CLAIMED OR TO BE CLAIMED BY THE
16 PLAINTIFF; THE DATE THE PLAINTIFF FILED THE CLAIM; THE DISPOSITION OF
17 THE CLAIM; AND WHETHER THERE HAS BEEN A REQUEST TO DEFER, DELAY,
18 SUSPEND, OR TOLL THE CLAIM. THE SWORN STATEMENT SHALL INCLUDE
19 AN ATTESTATION FROM THE PLAINTIFF, UNDER PENALTY OF PERJURY, THAT
20 THE SWORN STATEMENT IS COMPLETE AND IS BASED ON A GOOD FAITH
21 INVESTIGATION OF ALL POTENTIAL CLAIMS AGAINST ASBESTOS TRUSTS.

22 (2) NOT LATER THAN ONE HUNDRED TWENTY DAYS BEFORE TRIAL,
23 THE PLAINTIFF SHALL PROVIDE ALL PARTIES WITH ALL TRUST CLAIMS
24 MATERIALS FOR EACH ASBESTOS TRUST CLAIM FILED BY THE PLAINTIFF OR
25 BY ANYONE ON THE PLAINTIFF'S BEHALF FOR ANY ASBESTOS-RELATED
26 DISEASE.

27 (3) THE PLAINTIFF SHALL SUPPLEMENT THE INFORMATION AND

1 MATERIALS PROVIDED PURSUANT TO THIS SECTION WITHIN NINETY DAYS
2 AFTER THE PLAINTIFF FILES AN ADDITIONAL ASBESTOS TRUST CLAIM,
3 SUPPLEMENTS AN EXISTING ASBESTOS TRUST CLAIM, OR RECEIVES
4 ADDITIONAL INFORMATION OR MATERIALS RELATED TO ANY CLAIM OR
5 POTENTIAL CLAIM AGAINST AN ASBESTOS TRUST.

6 (4) FAILURE BY THE PLAINTIFF TO MAKE AVAILABLE TO ALL
7 PARTIES ALL TRUST CLAIMS MATERIALS AS REQUIRED BY THIS PART 14
8 SHALL CONSTITUTE GROUNDS FOR THE COURT TO EXTEND THE TRIAL DATE
9 IN AN ASBESTOS ACTION.

10 **13-21-1405. Discovery - use of materials.** (1) TRUST CLAIMS
11 MATERIALS AND TRUST GOVERNANCE DOCUMENTS ARE PRESUMED TO BE
12 RELEVANT AND AUTHENTIC AND ARE ADMISSIBLE IN EVIDENCE. NO CLAIMS
13 OF PRIVILEGE APPLY TO ANY TRUST CLAIMS MATERIALS OR TRUST
14 GOVERNANCE DOCUMENTS.

15 (2) A DEFENDANT IN AN ASBESTOS ACTION MAY SEEK DISCOVERY
16 FROM AN ASBESTOS TRUST. THE PLAINTIFF MAY NOT CLAIM PRIVILEGE OR
17 CONFIDENTIALITY TO BAR DISCOVERY AND SHALL PROVIDE CONSENT OR
18 OTHER EXPRESSION OF PERMISSION THAT MAY BE REQUIRED BY THE
19 ASBESTOS TRUST TO RELEASE INFORMATION AND MATERIALS SOUGHT BY
20 A DEFENDANT.

21 (3) TRUST CLAIM MATERIALS THAT ARE SUFFICIENT TO ENTITLE A
22 CLAIM TO CONSIDERATION FOR PAYMENT UNDER THE APPLICABLE TRUST
23 GOVERNANCE DOCUMENTS MAY BE SUFFICIENT TO SUPPORT A JURY
24 FINDING THAT THE PLAINTIFF MAY HAVE BEEN EXPOSED TO PRODUCTS FOR
25 WHICH THE ASBESTOS TRUST WAS ESTABLISHED TO PROVIDE
26 COMPENSATION AND THAT SUCH EXPOSURE MAY BE A SUBSTANTIAL
27 FACTOR IN CAUSING THE PLAINTIFF'S INJURY THAT IS AT ISSUE IN THE

1 ASBESTOS ACTION.

2 **13-21-1406. Scheduling trial - stay of action.** (1) A COURT
3 SHALL STAY AN ASBESTOS ACTION IF THE COURT FINDS THAT THE
4 PLAINTIFF HAS FAILED TO MAKE THE DISCLOSURES REQUIRED UNDER
5 SECTION 13-21-1404 WITHIN ONE HUNDRED TWENTY DAYS PRIOR TO THE
6 TRIAL DATE.

7 (2) IF, IN THE DISCLOSURES REQUIRED BY SECTION 13-21-1404, A
8 PLAINTIFF IDENTIFIES A POTENTIAL ASBESTOS TRUST CLAIM, THE JUDGE
9 SHALL HAVE THE DISCRETION TO STAY THE ASBESTOS ACTION UNTIL THE
10 PLAINTIFF FILES THE ASBESTOS TRUST CLAIM AND PROVIDES ALL PARTIES
11 WITH ALL TRUST CLAIMS MATERIALS FOR THE CLAIM. THE PLAINTIFF SHALL
12 ALSO STATE WHETHER THERE HAS BEEN A REQUEST TO DEFER, DELAY,
13 SUSPEND, OR TOLL THE CLAIM AGAINST THE ASBESTOS TRUST.

14 **13-21-1407. Identification of additional or alternative asbestos**
15 **trusts by defendant.** (1) NOT LESS THAN NINETY DAYS BEFORE TRIAL, IF
16 A DEFENDANT IDENTIFIES AN ASBESTOS TRUST CLAIM NOT PREVIOUSLY
17 IDENTIFIED BY THE PLAINTIFF THAT THE DEFENDANT REASONABLY
18 BELIEVES THE PLAINTIFF CAN FILE, THE DEFENDANT MAY MOVE THE COURT
19 FOR AN ORDER TO REQUIRE THE PLAINTIFF TO FILE THE ASBESTOS TRUST
20 CLAIM. THE DEFENDANT SHALL PRODUCE OR DESCRIBE THE
21 DOCUMENTATION IT POSSESSES OR IS AWARE OF IN SUPPORT OF THE
22 MOTION.

23 (2) WITHIN TEN DAYS AFTER RECEIVING THE DEFENDANT'S MOTION
24 PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE PLAINTIFF SHALL, FOR
25 EACH ASBESTOS TRUST CLAIM IDENTIFIED BY THE DEFENDANT, MAKE ONE
26 OF THE FOLLOWING RESPONSES:

27 (a) FILE THE ASBESTOS TRUST CLAIM;

1 (b) FILE A WRITTEN RESPONSE WITH THE COURT SETTING FORTH
2 THE REASONS WHY THERE IS INSUFFICIENT EVIDENCE FOR THE PLAINTIFF
3 TO FILE THE ASBESTOS TRUST CLAIM; OR

4 (c) FILE A WRITTEN RESPONSE WITH THE COURT REQUESTING A
5 DETERMINATION THAT THE PLAINTIFF'S EXPENSES OR ATTORNEY FEES AND
6 EXPENSES TO PREPARE AND FILE THE ASBESTOS TRUST CLAIM IDENTIFIED
7 IN THE DEFENDANT'S MOTION EXCEED THE PLAINTIFF'S REASONABLY
8 ANTICIPATED RECOVERY FROM THE TRUST.

9 (3) (a) IF THE COURT DETERMINES THAT THERE IS A SUFFICIENT
10 BASIS FOR THE PLAINTIFF TO FILE THE ASBESTOS TRUST CLAIM IDENTIFIED
11 BY A DEFENDANT, THE COURT SHALL ORDER THE PLAINTIFF TO FILE THE
12 ASBESTOS TRUST CLAIM AND SHALL STAY THE ASBESTOS ACTION UNTIL
13 THE PLAINTIFF FILES THE ASBESTOS TRUST CLAIM AND PROVIDES ALL
14 PARTIES WITH ALL TRUST CLAIMS MATERIALS NO LATER THAN THIRTY
15 DAYS BEFORE TRIAL.

16 (b) IF THE COURT DETERMINES THAT THE PLAINTIFF'S EXPENSES OR
17 ATTORNEY FEES AND EXPENSES TO PREPARE AND FILE THE ASBESTOS
18 TRUST CLAIM IDENTIFIED IN THE DEFENDANT'S MOTION EXCEED THE
19 PLAINTIFF'S REASONABLY ANTICIPATED RECOVERY FROM THE ASBESTOS
20 TRUST, THE COURT SHALL STAY THE ASBESTOS ACTION UNTIL THE
21 PLAINTIFF FILES WITH THE COURT AND PROVIDES ALL PARTIES WITH A
22 VERIFIED STATEMENT OF THE PLAINTIFF'S HISTORY OF EXPOSURE, USAGE,
23 OR OTHER CONNECTION TO ASBESTOS COVERED BY THE ASBESTOS TRUST.

24 **13-21-1408. Application.** THE PROVISIONS OF THIS PART 14 APPLY
25 TO ALL ASBESTOS ACTIONS FILED ON OR AFTER THE EFFECTIVE DATE OF
26 THIS PART 14.

27 **SECTION 2. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2018 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.